

William C. Rand, Esq. (WR-7685)
 LAW OFFICE OF WILLIAM COUDERT RAND
 711 Third Ave., Suite 1505
 New York, New York 10017
 (Phone) (212) 286-1425; (Fax)(212) 599-7909
 Co-counsel

Jeffrey M. Gottlieb, Esq. (JG-7905)
 Dana L. Gottlieb, Esq. (DG-6151)
 GOTTLIEB & ASSOCIATES
 150 East 18th Street, Suite PHR
 New York, New York 10003
 Tel: (212) 228-9795

and

Peter Romero, Esq. (PR-1658)
 Frank & Associates
 500 Bi-County Blvd, Suite 112N
 Farmingdale, N.Y. 11735
 (631) 756-0400
 Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

-----X	
MORRIS WHITE, LAWRENCE CARRINGTON, and	:
GEORGE GARDNER,	: ECF
Individually and on Behalf of All Other	: 07 Civ. 02345 (RJD)(JMA)
Persons Similarly Situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
WESTERN BEEF, INC.,	:
WESTERN BEEF RETAIL, INC.,	:
MIGUEL ABINADER, DERRICK GARFIELD,	:
and JOHN DOES #1-10,	:
	:
Defendants.	:
-----X	

DECLARATION OF PLAINTIFF GEORGE GARDNER

DECLARATION OF PLAINTIFF GEORGE GARDNER

I, **GEORGE GARDNER**, hereby declare under penalty of perjury under the laws of the United States of America that the following is true:

1. I was employed by Defendant as a Grocery Manager at Defendant's retail supermarkets in Ridgewood and Springfield Gardens from in or about 1982 until 2002.

2. My job duties included but were not limited to pricing items, unloading trucks, stocking shelves, taking inventory, building displays, merchandizing, and cleaning the backroom.

3. From in or about 2002 until 2004, I simultaneously held the positions of Frozen Food Manager and Dairy Manager at Defendant's Hempstead location.

4. My job duties included but were not limited to unloading the frozen food truck onto u-boats and stocking the shelves.

5. Throughout my employment with Defendant, I was paid a weekly salary of \$775.00, regardless of the actual number of hours I worked each week.

6. Throughout the course of my employment with Defendant, I regularly worked in excess of forty (40) hours per week for which I was not paid overtime at a rate of 1½ times my regular hourly rate of pay.

7. Attached hereto as Exhibit A are pay stubs showing that I was paid a flat weekly rate of \$775, regardless of the actual number of hours I worked.

8. I often worked inventory on Sunday, for which I was not paid at all.

9. In addition, although I was frequently required to work without a meal break, Defendant made deductions from my pay for meal breaks.

10. Throughout the course the twenty years that I worked for Defendant, I was aware and had personal knowledge of other persons employed by Defendant as department heads who performed the same or similar work as myself. Upon information and belief, Defendant employed at least forty (40) such similar employees

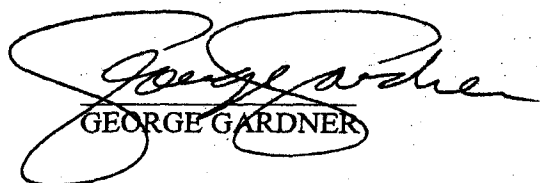
11. Throughout the course of my employment, I observed other employees employed as department head perform the same duties as me and regularly work more than forty (40) hours per week for which they were not paid overtime.

12. The Dairy and Frozen Food managers at Defendant's other locations also worked alongside the employees they managed, and performed the same duties that I did, such as unloading trucks, stocking shelves, and pricing items.

13. Defendant also employs a "Receiving Manager" at each of its locations. The Receiving Manager does not manage or supervise any employee. Rather, the Receiving Manager performs "hands-on" manual work.

14. Throughout the period of my employment, I discussed the issue with other department heads who all said that they worked more than forty (40) hours per week but were not paid overtime.

Dated:



GEORGE GARDNER

Sworn to before me
this 3 day of March, 2009.



Notary Public

JODI MILLER
Notary Public, State of New York
No. 01M16165611
Qualified in Queens County
Commission Expires 05/14/2011

EXHIBIT A

WESTERN BEEF INC.
47-05 METROPOLITAN AVE
RIDGEWOOD N.Y. 11385

20

NB MERRICK

EMPL. NO.
60019

SOC. SEC. NO.
112-44-7223

DATE
06/22/94

CHECK NO.
586865

REG. HRS.	0.1. HRS.	HOL. HRS.	VAC. HRS.	SICK HRS.	TOT. HRS.	PER. HR	
REG. PAY	0.1. PAY	HOL. PAY	VAC. PAY	SICK PAY	OTHER PAY	E.I.C.	
775.00							GROSS
							775.00
FICA TAX	FED. TAX	STATE	CITY	UNION DUES	DISABIL. OTHER DED.		NET
48.05	90.88	44.39	24.33	SEC.	LINE	BELON	555.51
11.24							
YTD GROSS	YTD FICA	YTD FED.	YTD STATE	YTD CITY			
21425.00	1639.08	2453.76	1198.53	656.91			
SUI/DIS							
0.60							
							GEORGE GARDNER
							115

PERIOD ENDING DATE 06/18/94

DETACH AND RETAIN FOR YOUR RECORDS

O LORD, LET ME NOT BE AFRAID TO ASK FOR
HELP.